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EMILY AND MALCOLM FAIRBAIRN

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

EMILY FAIRBAIRN and MALCOLM  
FAIRBAIRN,

**Plaintiffs,**

v.

FIDELITY INVESTMENTS CHARITABLE  
GIFT FUND

**Defendant.**

Case No. 3:18-cv-04881-JSC

[Hon. Jacqueline Scott Corley]

## **DECLARATION OF RACHANA PATHAK IN SUPPORT OF OBJECTIONS TO BILL OF COSTS**

1 I, Rachana Pathak, declare as follows:

2       1. I am counsel of record for Plaintiffs Emily and Malcolm Fairbairn in this action. I  
3 submit this declaration in support of Plaintiffs' Objections to the Bill of Costs filed by Fidelity  
4 Investments Charitable Gift Fund. I make this declaration based on personal knowledge and, if  
5 called to testify about its contents, could and would do so competently.

6       2. Attached as **Exhibit A** is a true and correct copy of a cover email and letter that I sent  
7 on March 15, 2021 to counsel for Fidelity Investments Charitable Gift Fund ("Fidelity") to explain  
8 Plaintiffs' objections to the bill of costs filed by Fidelity on March 11, 2021.

9       3. My associate, John Stokes, and I had a teleconference on March 18, 2021 with  
10 counsel for Fidelity: David Marcus, Chris Casamassima, and Nick Purcell. We discussed Plaintiffs'  
11 objections to the costs requested for reporters' transcripts (item 8b) and deposition transcripts (item  
12 8c). Fidelity's counsel did not address Plaintiffs' objections to the other claimed costs.

13       4. We continued our discussion of reporters' transcripts (item 8b) via email  
14 correspondence and agreed that Fidelity would withdraw its request for the cost of expedited trial  
15 transcripts (\$5,019.30) and seek only the cost of ordinary (non-expedited) trial transcripts, at the rate  
16 of \$3.65 for the original and \$0.90 for the first copy. This results in a total cost of \$2,702.20.

17       5. We also continued our discussion of deposition transcripts (item 8c) via email  
18 correspondence and agreed that Fidelity would reduce its requested costs to amounts that reflect only  
19 two copies of depositions (one transcript and one video) and only non-expedited copies of  
20 depositions. The parties' agreement is reflected in **Exhibit B**, received from Fidelity's counsel.

21       6. Attached as **Exhibit C** is a true and correct copy of excerpts of the transcript of the  
22 case management conference on September 16, 2020.

23       7. Attached as **Exhibit D** are two spreadsheets based on Fidelity's supporting  
24 documentation for item 8d, ECF 259-7. The first spreadsheet (pp. 1-3) identifies and aggregates the  
25 Impact Trial Consulting LLC charges indicated as "Services: Graphics." The second spreadsheet (p.  
26 4) identifies and aggregates the charges *other* than those indicated as "Services: Graphics."

27       8. Attached as **Exhibit E** are true and correct copies of some of Fidelity's  
28 demonstratives, DD 1.1 through DD 1.5. Fidelity disclosed these demonstratives for use during its

opening argument at trial. The graphics that Fidelity used with its experts at trial appear to be based on graphics from those experts' reports, often with little or no variation.

9. Attached as **Exhibit F** is a true and correct copy of an email from Chris Casamassima, dated October 7, 2019. In the email, Mr. Casamassima proposes that Mr. Zarcu's deposition take place on November 7, 2019, in the Los Angeles office of Wilmer Hale.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 25, 2021

*/s/ Rachana Pathak*

Rachana Pathak

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